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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,655	09/29/2003	Vivian A. Wright	127000.0301	4783

21269 7590 10/11/2006
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EXAMINER

DIXON, ANNETTE FREDRICKA

ART UNIT	PAPER NUMBER
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3771

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/674,655	Applicant(s) WRIGHT, VIVIAN A.	
	Examiner Annette F. Dixon	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/18/2003 + 12/22/2003

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, **Claims 1-7**, in the reply filed on July 17, 2006, is acknowledged. The traversal is on the ground(s) that **Claims 8-15** share special technical features with the elected claims in the pending application and that by searching and examining these claims together would not place an undue burden on the Examiner. This is not found persuasive because the Examiner respectfully disagrees. As previously stated, these inventions are distinct and therefore would place an undue burden on the Examiner to search both groups of claims together. For that reason, the restriction requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. The information disclosure statement filed January 18, 2006, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

3. Specifically, Applicant has not included a copy of the following documents: GB 2369591 A and "Tegadern Versus Gauze Dressing in Breast Surgery".

Note: Even though the Examiner has used Worthington (GB 2369591 A) in the rejection of Claims, Applicant is still required to file prior art documents.

Drawings

4. The drawings are objected to because there is an extra element number "700" that does not have a leader line for pointing to an element in the drawing.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: exhaled air "800".

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: elements "515", "520", "525", and "905".

7. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. **Claims 1-7** are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Worthington (GB 2369591 A).

10. **As to Claim 1**, Worthington discloses a nebulizing pad comprising: a flap (5), and an absorbent central core (1) attached to the flap (5), wherein the flap includes an adhesive coating (3).

11. **As to Claim 2**, Worthington discloses the adhesive coating is pressure sensitive. Inherently, self-adhesive strips facilitate the adhesion by applying pressure. (Page 4).

12. **As to Claim 3**, Worthington discloses the adhesive coating includes one or more adhesive strips. (Page 4, Lines 1-13).

13. **As to Claim 4**, Worthington discloses the flap (5) is shaped as an arched rectangle. (Figure 2b).

14. **As to Claim 5**, Worthington discloses the flap (5) is flexible. Inherently, the flexible nature of the flap enables the proper placement of the device onto the patient.

15. **As to Claim 6**, Worthington discloses the absorbent central core (1) is made from fabric or foam. (Page 5, Lines 10-15).

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16. **As to Claim 7**, Worthington discloses the absorbent central core (1) includes one or more portions that are pervious to liquids and thus assist in the maintaining of proper temperature and humidity conditions within the patient's airway. (Page 4, Lines 15-20).

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art listed by patent number below shows additional inventions capable of performing as nebulizing pads having a flap and absorbent core for covering tracheostomy.

Coates; John	US 4704107
Smith; Rory James Maxwell	US 5666950
Strong; Samuel E.	US 5840091
Bezicot; Robert	US 5487382
Skov; Martin R.	US 4850347
Geaney; Sheila A.	US 4004584
Oshida, Nobue	PCT 2004/082543 A1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



AFD

September 27, 2006



Henry Bennett
Supervisory Patent Examiner
Group 3700